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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,827	02/04/2002	Scott M. Lewit	5785-30	4819

7590 01/07/2004

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EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/066,827

Applicant(s)

LEWIT ET AL.

Examiner

Hai Vo

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 22-27.

Claim(s) objected to: 7.

Claim(s) rejected: 1-6, 9, 10 and 19-21.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: Amendment is non-compliant with 37 CFR 1.121 with respect to status identifiers and amendment preservation

Continuation of 5. does NOT place the application in condition for allowance because: Claims 1, 9, 10, 19 and 25-27 should preferably be used with a status identifier as currently amended in accordance with US PTO revised amendment practice. The examiner wishes to point out that claims 1-6, 9, 10 and 19-21 were rejected under 35 USC 102(e) as being anticipated by Lewit (US 6,497,190), NOT (US 5,664,518) as stated by Applicants at page 7 of the amendment filed on 12/16/2003. The compliant amendment would be entered if the compliant version is submitted but still not patentable for the following reasons. Applicants argue that since the the foam core 14 filled interstices 11 of the non-woven layer 14 without penetrating into the reinforcing fabric layer, the non-woven fabric of Lewit has implicitly high resistance to flowing materials compared to the the reinforcing fabric layer. The arguments are not found persuasive. It appears that Applicants are using the process disclosed in US 5,429,066 to form the arrangement of foam, non-woven fabric and reinforcing layer (page 10, lines 5-10 of the specification). US 5,429,066 discloses a continuous manufacturing process wherein the foam core filled interstices of the non-woven layer without penetrating into the reinforcing fabric layer as described in Lewit. Accordingly, no structural distinction is found between the composite parts of Lewit and the present invention. Therefore, it is not understood that the non-woven fabric of Lewit would have performed differently from that of the present invention with respect in the flow resistance. Further, Applicants argue that the non-woven fabric layer made of matted or compressed fibers will tend to impede a flow of resin. However, Lewit as evidenced by Uemura is using the same materials to form the non-woven fabric layer and reinforcing fabric layers as Applicants. Again, it is not seen that the non-woven layer of Lewit would have performed differently from that of the present invention in term of flow resistance. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Additionally, it seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete (Note discussion found in *Ex parte Slob*, 157 USPQ 172).

  
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